

## EXHIBIT A

1           **UDALL|SHUMWAY**  
2           COUNSELORS AT LAW SINCE 1965

3           1138 NORTH ALMA SCHOOL ROAD, SUITE 101  
4           MESA, ARIZONA 85201  
5           Telephone: 480.461.5300 | Fax: 480.833.9392

6           David R. Schwartz - #009264  
7           das@udallshumway.com  
8           Kimberly R. Davis - # 030210  
9           krd@udallshumway.com  
10          Attorneys for Defendant Maricopa County  
11          Community College District

12           UNITED STATES DISTRICT COURT  
13           DISTRICT OF ARIZONA

14           CINDI TANNER Cindi Tanner, an      NO. CV-18-00377-PHX-SPL  
15          individual,

16           Plaintiff,

17          v.

18           MARICOPA COUNTY COMMUNITY  
19           COLLEGE DISTRICT Maricopa County  
20           Community College District, a political  
21           subdivision of Arizona; MARIA WISE  
22           Maria Wise, an individual and in her  
23           official capacity; VIVIAN MIRANDA-  
24           STRAWBRIDGE Vivian Miranda-  
25           Strawbridge, an individual and in her  
26           official capacity,

27           Defendants.

28           DEFENDANT MARICOPA COUNTY  
          COMMUNITY COLLEGE  
          DISTRICT'S SECOND AMENDED  
          ANSWER AND JURY DEMAND

22           Defendant Maricopa County Community College District ("District") hereby  
23          admits, denies and alleges in response to the allegations of the Complaint as follows:

- 24           1.       The District admits that Cynthia Tanner, aka Cindi Tanner, is a resident of  
25          Maricopa County, Arizona.  
26           2.       The District admits the allegations of ¶ 2 of the Complaint.

1       3. The District admits that Maria Wise (“Dr. Wise”), Ed.D, has since April 23,  
2 2016 served as the Vice President of Academic and Student Affairs and Title IX  
3 Coordinator at GateWay Community College (“GateWay”). The remaining allegations  
4 of ¶ 3 of the Complaint are denied.

5       4. The District admits that since September 12, 2016 Vivian Miranda-  
6 Wendelken (who was formerly known as Vivian Miranda-Strawbridge) (hereinafter “Dr.  
7 Miranda”) served as GateWay’s Dean of Student Success and Retention. The remaining  
8 allegations of ¶ 4 of the Complaint are denied.

9       5. The District admits that the Maricopa County Superior Court had  
10 jurisdiction over the subject matter alleged in the Complaint. The remaining allegations  
11 of ¶ 5 of the Complaint are denied. The District affirmatively alleges that this federal  
12 court has jurisdiction over the federal law claims pursuant to 28 U.S.C. §§ 1331, 1343  
13 and jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. The District  
14 further alleges that this action was timely and properly removed from the Maricopa  
15 County Superior Court to this federal court pursuant to 28 U.S.C. §§ 1441-1442, 1446.

16       6. The District admits that Maricopa County was the proper venue in State  
17 Court as the Plaintiff and the named Defendants resided in and/or conducted business  
18 within that County. The District affirmatively alleges that venue is proper in this federal  
19 District Court.

20       7. The District admits that Plaintiff became a part-time employee of the  
21 District during the Spring of 2015 and she served as a full-time employee from January  
22 3, 2017 until her termination on June 15, 2017.

23       8. The District admits that from January 3, 2017 until her termination on June  
24 15, 2017 Plaintiff served as the Office Coordinator II who worked in the Disability  
25 Resources and Services (“DRS”) office located at GateWay’s Washington campus.

26       9. The District denies the allegations of ¶ 9 of the Complaint.

27       10. The District admits that from January 3, 2017 until her termination on June  
28 15, 2017 Plaintiff served as the Office Coordinator II who worked in the DRS office

1 located at GateWay's Washington campus. The remaining allegations of ¶ 10 of the  
2 Complaint are denied.

3       11. The District denies the allegations of ¶ 11 of the Complaint.  
4       12. The District denies the allegations of ¶ 12 of the Complaint.  
5       13. The District denies the allegations of ¶ 13 of the Complaint.  
6       14. The District denies the allegations of ¶ 14 of the Complaint.  
7       15. The District denies the allegations of ¶ 15 of the Complaint.  
8       16. The District denies the allegations of ¶ 16 of the Complaint.  
9       17. The District denies the allegations of ¶ 17 of the Complaint.  
10      18. The District denies the allegations of ¶ 18 of the Complaint.  
11      19. The District denies the allegations of ¶ 19 of the Complaint.  
12      20. The District denies the allegations of ¶ 20 of the Complaint.  
13      21. The District denies the allegations of ¶ 21 of the Complaint.  
14      22. The District lacks sufficient information as to the truth of the allegations of  
15 ¶ 22 of the Complaint and, therefore, denies such allegations.

16       23. The District lacks sufficient information as to the truth of the allegations of  
17 ¶ 23 of the Complaint and, therefore, denies such allegations.

18       24. The District denies the allegations of ¶ 24 of the Complaint.  
19       25. The District denies the allegations of ¶ 25 of the Complaint.  
20       26. The District denies the allegations of ¶ 26 of the Complaint  
21       27. The District denies the allegations of ¶ 27 of the Complaint.  
22       28. The District denies the allegations of ¶ 28 of the Complaint.  
23       29. The District admits that Dr. Miranda, the acting DRS Manager in the  
24 absence of James Rogers, asked Plaintiff to provide via campus e-mail, addressed to Dr.  
25 Miranda, disability records for one or more students who Dr. Miranda had to meet with  
26 to assess them for determinations regarding eligibility and/or reasonable  
27 accommodations. The District denies the remaining allegations of ¶ 29 of the Complaint.

28       30. The District denies the allegations of ¶ 30 of the Complaint.

1       31. The District admits that Dr. Miranda sought and obtained direct access to  
2 GateWay's disability database on or about February 16, 2017. The District denies the  
3 remaining allegations of ¶ 31 of the Complaint.

4       32. The District admits that in a May 28, 2017 letter from Plaintiff to Dr.  
5 Miranda it refers to alleged FERPA violations. The District admits that Plaintiff was  
6 terminated on June 15, 2017, but affirmatively alleges that the process for termination  
7 was begun prior to May 28, 2017. The District affirmatively alleges that the transmittal  
8 via the District's secure e-mail system to Dr. Miranda would and did not violate FERPA,  
9 20 U.S.C. § 1232g, and Plaintiff was or should have been aware prior to that time that  
10 James Rogers, the DRS Manager, had transmitted student disability records via campus  
11 email to Dr. Miranda when appropriate for her to see them so she could perform her job  
12 duties.

13       33. Upon information and belief, the District admits that Plaintiff did contact  
14 Eugene ("Gene") Heppard, the DRS Manager for DRS at Phoenix College, another  
15 college operated by the District. The District denies the remaining allegations of ¶ 33 of  
16 the Complaint.

17       34. Upon information and belief, on or about February 9, 2017 Plaintiff sent a  
18 text to Gene Heppard. The District lacks sufficient information as to the truth of the  
19 remaining allegations of ¶ 34 of the Complaint and, therefore, denies such allegations.  
20 The District affirmatively alleges that the text contained inappropriate criticisms of or  
21 disparaging statements by Plaintiff regarding GateWay's administration including Dr.  
22 Wise and Dr. Miranda.

23       35. The District denies the allegations of ¶ 35 of the Complaint. The District  
24 affirmatively alleges that Gene Heppard shared the fact of the inappropriate criticisms or  
25 disparaging statements by Plaintiff with Phoenix College's Interim Vice President of  
26 Student Affairs. That Vice President shared with Dr. Wise only the fact of the  
27 inappropriate criticisms or disparaging statements by Plaintiff.

28

1       36. The District denies the allegations of ¶ 36 of the Complaint. The District  
2 affirmatively alleges that Plaintiff was advised that the sharing of inappropriate criticisms  
3 or disparaging statements with persons employed by the District at other colleges  
4 regarding perceived problems with her supervisors at GateWay was inappropriate.

5       37. The District denies the allegations of ¶ 37 of the Complaint.

6       38. The District denies the allegations of ¶ 38 of the Complaint.

7       39. The District lacks any information regarding the allegations of ¶ 39 and,  
8 therefore, denies such allegations.

9       40. The District lacks any information regarding the allegations of ¶ 40 and,  
10 therefore, denies such allegations.

11       41. The District lacks any information regarding the allegations of ¶ 41 and,  
12 therefore, denies such allegations.

13       42. The District lacks any information regarding the allegations of ¶ 42 and,  
14 therefore, denies such allegations.

15       43. The District lacks any information regarding the allegations of ¶ 43 and,  
16 therefore, denies such allegations.

17       44. The District lacks any information regarding the allegations of ¶ 44 and,  
18 therefore, denies such allegations.

19       45. The District lacks any information regarding the allegations of ¶ 45 and,  
20 therefore, denies such allegations.

21       46. The District lacks any information regarding the allegations of ¶ 46 and,  
22 therefore, denies such allegations.

23       47. The District lacks any information regarding the allegations of ¶ 47 and,  
24 therefore, denies such allegations.

25       48. The District lacks any information regarding the allegations of ¶ 48 and,  
26 therefore, denies such allegations. The District affirmatively alleges that it was not  
27 notified that Plaintiff filed a complaint with US Department of Education's Office of Civil  
28 Rights.

1       49. The District lacks any information regarding the allegations of ¶ 49 and,  
2 therefore, denies such allegations.

3       50. The District admits that on May 28, 2017 Plaintiff delivered to Dr. Miranda  
4 a letter alleging violations of the Americans with Disabilities Act (“ADA”), regulations  
5 based on the ADA, FERPA, Title IX set forth in 20 U.S.C. § 1681 et seq., and practices  
6 recommended by a private organization known as AHEAD. The letter speaks for itself  
7 as to what was alleged. The District denies the remaining allegations of ¶ 50 of the  
8 Complaint. The District denies that it violated any applicable laws.

9       51. The District denies the allegations of ¶ 51 of the Complaint.

10       52. The District admits that on February 27, 2017 Dr. Miranda, as acting DRS  
11 Manager, met with Plaintiff to go over Dr. Miranda’s workplace expectations for Plaintiff  
12 to properly perform her duties in the Office Coordinator II position; that Dr. Miranda  
13 explained to Plaintiff that she, like all full-time employees, was required to accurately and  
14 fully enter information and complete her time card using the District’s Human Capital  
15 Management system; that Dr. Miranda also explained that she was responsible for  
16 entering information and submitting invoices for the payment of various persons or  
17 companies who provided services such as note-taking and interpreting using the District’s  
18 financial system; that scheduling services and submitting for the payment for such  
19 services represented a major aspect of up to 30% of the essential duties of an Office  
20 Coordinator II; and Dr. Miranda indicated Plaintiff should obtain training to fulfill these  
21 duties. The District denies the remaining allegations of ¶ 52 of the Complaint.

22       53. The District denies the allegations of ¶ 53 of the Complaint.

23       54. The District admits that at some time Dr. Miranda advised Plaintiff that she  
24 was inappropriately entering information in DRS case notes for an individual student.  
25 The District denies the remaining allegations of ¶ 54 of the Complaint.

26       55. The District denies the allegations of ¶ 55 of the Complaint.

27       56. The District denies the allegations of ¶ 56 of the Complaint.

28       57. The District denies the allegations of ¶ 57 of the Complaint.

1       58. The District denies the allegations of ¶ 58 of the Complaint.

2       59. The District does have records including the Workplace Expectations  
3 document, various e-mails, and other documents regarding the duties for which Plaintiff  
4 was responsible. The District denies the remaining allegations of ¶ 59 of the Complaint.

5       60. The District admits that Plaintiff had to be told on several occasions that  
6 her duties were to provide general procedural information to students, staff and faculty,  
7 and it was not her role as the Office Coordinator II in DRS to make substantive  
8 assessments or determinations. The District denies the remaining allegations of ¶ 60 of  
9 the Complaint.

10      61. The District denies the allegations of ¶ 61 of the Complaint.

11      62. The District denies the allegations of ¶ 62 of the Complaint.

12      63. The District admits that on May 3, 2017 Dr. Miranda sent an e-mail to  
13 Plaintiff and affirmatively alleges that such e-mail speaks for itself. The District denies  
14 the remaining allegations of ¶ 63 of the Complaint.

15      64. The District denies the allegations of ¶ 64 of the Complaint.

16      65. The District admits that Plaintiff stated that her son had tried to commit  
17 suicide and that as a result she was unavailable to work for a period of time. The District  
18 further admits and/or alleges that Spring Break in the Spring 2017 semester at GateWay  
19 was March 13-19, 2017 and the entire college at all campuses was closed March 16-19,  
20 2017. The District denies the remaining allegations of ¶ 65 of the Complaint.

21      66. The District admits that Dr. Miranda was informed of Plaintiff's situation  
22 regarding her son. The District denies the remaining allegations of ¶ 66 of the Complaint.

23      67. The District denies the allegations of ¶ 67 of the Complaint.

24      68. The District denies the allegations of ¶ 68 of the Complaint.

25      69. The District denies the allegations of ¶ 69 of the Complaint.

26      70. The District denies the allegations of ¶ 70 of the Complaint.

27      71. The District admits that due to Plaintiff's failure to obtain the training which  
28 she was directed to get by Dr. Miranda, Plaintiff was aware that she failed to take the

1 necessary steps to get vendors timely and properly paid. The District denies the remaining  
2 allegations of ¶ 71 of the Complaint.

3       72. The District admits that on June 15, 2017 Plaintiff was notified by letter  
4 that she was terminated as of that date and this date was before the end of her probationary  
5 period. The District affirmatively alleges it had the sole right to terminate Plaintiff's  
6 employment at any time.

7       73. The District admits the allegations of ¶ 73 of the Complaint.

8       74. The District admits that Plaintiff on April 24, 2017 provided to Alyssa  
9 Brown, a HR Business Partner with the District's HR Solutions Center, a letter from  
10 Surge Points. The letter speaks for itself as to its contents. The District denies the  
11 remaining allegations of ¶ 74 of the Complaint.

12       75. The District admits that on May 1 or 2, 2017, Plaintiff submitted a Request  
13 for Reasonable ADA Accommodations form to the District's HR Solutions Center which  
14 alleged Plaintiff suffered from Post-Traumatic Stress Disorder. The document speaks for  
15 itself as to its content. The District denies the remaining allegations of ¶ 75 of the  
16 Complaint. The District affirmatively alleges that although provided with the proper  
17 form, Plaintiff failed to submit the other form necessary for the District to process a  
18 request for accommodation.

19       76. The District admits that the quoted language appears in a portion of the  
20 Request for Reasonable ADA Accommodations form submitted by Plaintiff. The District  
21 denies that the statement is accurate.

22       77. The District admits that such language appears in a portion of the Request  
23 for Reasonable ADA Accommodations form submitted by Plaintiff. The District denies  
24 that the statement is accurate or requests a reasonable accommodation for a disability  
25 under District policy, the ADA or the Rehabilitation Act.

26       78. The District denies the allegations of ¶ 78 of the Complaint.

27       79. The District denies the allegations of ¶ 79 of the Complaint.

1       80. The District lacks sufficient information as to the truth of the allegations in  
2 ¶ 80 of the Complaint and, therefore, denies such allegations. The District affirmatively  
3 alleges that Plaintiff represented and/or ratified her time cards which are inconsistent with  
4 such claim.

5       81. The District denies the allegations of ¶ 81 of the Complaint.

6       82. The District admits that Plaintiff's hourly rate for pay in 2017 was \$16.80  
7 per hour. The District denies the remaining allegations of ¶ 82 of the Complaint.

8       83. The District lacks sufficient information as to the truth of the allegations in  
9 ¶ 83 of the Complaint and, therefore, denies such allegations. The District affirmatively  
10 alleges that Plaintiff represented and/or ratified her time cards which are inconsistent with  
11 such claim.

12      84. The District paid Plaintiff for all time reported by and for her in 2016 and  
13 2017. The District denies the remaining allegations of ¶ 84 of the Complaint.

14      85. The District denies the allegations of ¶ 85 of the Complaint.

15      86. The District denies the allegations of ¶ 86 of the Complaint.

16      87. The District denies the allegations in ¶ 87 of the Complaint.

17                  **FIRST CLAIM FOR RELIEF**

18      88. In response to the allegations of ¶ 88 of the Complaint, the District  
19 incorporates its admission, denials and other responses set forth above or below.

20      89. The allegations of ¶ 89 of the Complaint do not seem to call for any  
21 admission or denial. The District acknowledges 42 U.S.C. § 12203(a), which is part of  
22 the ADA, and such statute speaks for itself, and must be interpreted in conjunction with  
23 other statutes, regulations and case law. The District denies that it violated such statute.

24      90. The allegations of ¶ 90 of the Complaint do not seem to call for any  
25 admission or denial. The District acknowledges 42 U.S.C. § 12203(b), which is part of  
26 the ADA, and such statute speaks for itself, and must be interpreted in conjunction with  
27 other statutes, regulations and case law. The District denies that it violated such statute.

28      91. The District denies the allegations of ¶ 91 of the Complaint.

1       92. The District admits that Plaintiff delivered a letter on May 28, 2017 to Dr.  
2 Miranda and that Plaintiff was terminated on June 15, 2017. The District denies those  
3 events are in any way related.

4       93. The allegations of ¶ 93 of the Complaint do not seem to call for any  
5 admission or denial. The District acknowledges the Rehabilitation Act and such statute  
6 speaks for itself, and must be interpreted in conjunction with other statutes, regulations  
7 and case law. The District denies that it violated such statute.

8       94. The District admits that Plaintiff delivered on or about May 1 or 2, 2017 a  
9 form requesting a reasonable accommodation and that Plaintiff was terminated on June  
10 15, 2017. The District denies those events are in any way related.

11 95. The District denies the allegations of ¶ 95 of the Complaint.

12       96. Except to the extent expressly admitted herein, the District denies every  
13 allegation of the First Claim for Relief and ¶ 1 through 95 of the Complaint, whether  
14 viewed singly or in combination.

**SECOND CLAIM FOR RELIEF**

16        97. In response to the allegations of ¶ 96 of the Complaint, the District  
17 incorporates its admission, denials and other responses set forth above or below.

18       98. The allegations of ¶ 97 of the Complaint do not seem to call for any  
19 admission or denial. The District acknowledges A.R.S. § 38-532 and such statute speaks  
20 for itself, and must be interpreted in conjunction with other statutes, regulations and case  
21 law. The District denies that it violated such statute.

22       99. The allegations of ¶ 98 and 99 of the Complaint do not seem to call for any  
23 admission or denial. The District acknowledges A.R.S. § 23-1501(3)(c)(ii) and such  
24 statute speaks for itself, and must be interpreted in conjunction with other statutes,  
25 regulations and case law. The District denies that it violated such statute.

26 100. The District admits that on May 28, 2017 Plaintiff delivered to Dr. Miranda  
27 a letter regarding alleged violations as set forth in the letter. The District denies the

1 remaining allegations of ¶ 100 of the Complaint. The District denies it violated any  
2 applicable law or retaliated for any disclosure protected by law.

3       101. The District denies the allegations of ¶ 101 of the Complaint.

4       102. The allegations of ¶ 102 of the Complaint do not seem to call for any  
5 admission or denial. The District acknowledges A.R.S. § 23-1501(3)(c)(i) and such  
6 statute speaks for itself, and must be interpreted in conjunction with other statutes,  
7 regulations and case law. The District denies that it violated such statute.

8       103. The District denies the allegations of ¶ 103 of the Complaint.

9       104. Except to the extent expressly admitted herein, the District denies every  
10 allegation of the Second Claim for Relief and ¶ 1 through 103 of the Complaint, whether  
11 viewed singly or in combination.

12                   **THIRD CLAIM FOR RELIEF**

13       105. In response to the allegations of ¶ 104 of the Complaint, the District  
14 incorporates its admission, denials and other responses set forth above or below.

15       106. The allegations of ¶ 105 of the Complaint do not seem to call for any  
16 admission or denial. The elements of the tort of intentional infliction of emotional distress  
17 are set forth in case law. The District denies that it committed this tort.

18       107. The District denies the allegations of ¶ 106 of the Complaint.

19       108. The District denies the allegations of ¶ 107 of the Complaint.

20       109. The District denies the allegations of ¶ 108 of the Complaint.

21       110. The District denies the allegations of ¶ 109 of the Complaint.

22       111. The allegations of ¶ 110 of the Complaint do not seem to call for any  
23 admission or denial. The doctrine of respondeat superior is as set forth in case law.

24       112. The District admits that the acts and omissions of Dr. Wise and Dr. Miranda  
25 were done in the course of their employment, and the District would be liable under the  
26 common law respondeat superior doctrine for this state law claim for their actions and  
27 omissions.

28       113. The District denies the allegations of ¶ 112 of the Complaint.

114. The District denies the allegations of ¶ 113 of the Complaint.

115. The District denies the allegations of ¶ 114 of the Complaint.

116. The District denies the allegations of ¶ 115 of the Complaint.

4           117. Except to the extent expressly admitted herein, the District denies every  
5 allegation of the Third Claim for Relief and ¶ 1 through 115 of the Complaint, whether  
6 viewed singly or in combination.

#### **FOURTH CLAIM FOR RELIEF**

8       118. This claim has been dismissed pursuant to stipulation of the parties and an  
9 order of this Court, so no response is necessary. In response to the allegations of ¶ 116 of  
10 the Complaint, the District incorporates its admission, denials and other responses set  
11 forth above or below.

118.

119. The District admits the allegations of ¶ 117 of the Complaint.

120. The District denies the allegations of ¶ 118 of the Complaint.

121. The District denies the allegations of ¶ 119 of the Complaint.

6       122. Except to the extent expressly admitted herein, the District denies every  
7 allegation of the Fourth Claim for Relief and ¶ 1 through 119 of the Complaint, whether  
8 viewed singly or in combination.

## **AFFIRMATIVE DEFENSES**

20 ¶ 123-119. The District alleges the Complaint and each claim for relief fails to  
21 state a valid claim upon which relief can be granted.

22       424:120. The District affirmatively alleges that Plaintiff's state law claims  
23 may be barred in part for the failure to timely comply with the notice of claim statute,  
24 A.R.S. § 12-821.01, having filed her notice on August 1, 2017 making any claim which  
25 accrued on or before February 2, 2017 barred.

26       ¶25.121. The District affirmatively alleges that Plaintiff's state law claims  
27 may be barred in part for the failure to timely file this action pursuant to A.R.S. § 12-541;

**Formatted:** Centered, No bullets or numbering

1 A.R.S. or A.R.S. § 12-821, and/or A.R.S. § 23-356 so that any state law claims accruing  
2 before January 9, 2017 would be barred.

3 126.122. The District affirmatively alleges that any claim for punitive  
4 damages under is barred pursuant to A.R.S. § 12-820.04 and/or 42 U.S.C. § 1981a.

5 123. The District affirmatively alleges that any claim for damages or equitable  
6 relief under the ADA or the Rehabilitation Act is subject to the limitations set forth in 42  
7 U.S.C. § 1981a.

8 124. The Defendants affirmatively allege that their statements regarding Plaintiff  
9 are or may be privileged under the First Amendment, the Arizona Constitution, and the  
10 common law and they did not utter such statements with actual malice as defined in court  
11 cases.

12 125. The Defendants affirmatively allege that their statements regarding Plaintiff  
13 were true or substantially true which is a complete defense.

14 126. The Defendants affirmatively allege that Plaintiff's claims which are based  
15 upon statements made regarding Plaintiff are subject to the framework and standards for  
16 a defamation action under the First Amendment, the Arizona Constitution, and the  
17 common law.

18 127. The Defendants affirmatively allege that Plaintiff's claim for infliction of  
19 emotional distress may be barred under Arizona's workers compensation statutes.

20 127.

21 128. The District affirmatively alleges that it has a good faith reason for not  
22 having paid any wages which might be due for alleged overtime.

23 129. The District affirmatively alleges that Plaintiff is estopped to claim she  
24 worked hours more than what she reported, recorded and/or ratified on her electronic time  
25 cards.

26 130. The District affirmatively alleges that Plaintiff waived her state law wage  
27 claim for hours worked which she did not report to the District in a timely manner.

1       431. The District affirmatively alleges Plaintiff's claim for equitable relief  
 2 should be barred or limited by her knowing and intentional violation of FERPA by  
 3 disclosing the names of students with disabilities in her Complaint filed in open court.

4       432.128. The District affirmatively alleges that it would have taken the same  
 5 action towards Plaintiff without regard to any alleged unlawful criteria or protected  
 6 activity.

7       433.129. The District affirmatively alleges that the District exercised care in  
 8 preventing and correcting promptly any alleged discrimination, and Plaintiff's claims  
 9 may be barred or limited due to her failure to utilize the policies and procedures offered  
 10 by the District for dealing internally with alleged discriminatory acts, hostile working  
 11 environments, and retaliation. The *Faragher/Ellerth* defense applies to protect the  
 12 District if an ADA claim is cognizable.

13       130. The District affirmatively alleges that it had legitimate non-discriminatory  
 14 and non-retaliatory reasons for all decisions and actions regarding Plaintiff.

15       131. The Defendants affirmatively allege that Plaintiff's unclean hands,  
 16 including violating FERPA, the ADA, and the Rehabilitation Act, should preclude or limit  
 17 her equitable remedies and/or damages.

18       434.—

19       132. The District affirmatively alleges that the Plaintiff has and/or may have  
 20 failed to mitigate or avoid her damages.

21       133. The District affirmatively alleges that Plaintiff's receipt of unemployment  
 22 benefits should reduce her claimed damages.

23       435.—

24       436. The District affirmatively alleges that, pursuant to 29 U.S.C. § 260, it acted  
 25 in good faith and that it had reasonable grounds for believing any act or omission alleged  
 26 was not a violation of the FLSA and this Court has discretion not to award liquidated  
 27 damages or any amount which exceeds the amount set forth in 29 U.S.C. § 216.

28

Formatted: Font: Italic

1       137. The District affirmatively alleges unclean hands and/or in pari delicto by  
2 Plaintiff bars and/or limits her recovery.

3 138. The District affirmatively alleges Plaintiff's wage claims are barred and/or  
4 limited due to laches.

5       134. The District reserves the right to make a claim under A.R.S. § 38-532(M)  
6 against Plaintiff for knowingly making a false claim.

7       135. The District affirmatively alleges that Plaintiff assumed the risk, was  
8 contributorily negligent and/or was otherwise at fault for her state law claim and such  
9 fault should reduce her damages pursuant to A.R.S. § 12-2506.

10 ¶39.136. The District affirmatively alleges the abolition of joint and several  
11 liability pursuant to A.R.S. § 12-2506.

12 140-137. The District affirmatively alleges that it may be entitled to recover  
13 their reasonable attorney's fees, expert witness fees, costs, and/or expenses pursuant to  
14 A.R.S. § 12-341.01, and/or 42 U.S.C. § 1988, and/or 42 U.S.C. § 12205.

15        441,138. The District affirmatively alleges that it may be entitled to recover  
16 its taxable costs incurred in this action.

**DEMAND FOR A JURY TRIAL**

18 The District hereby requests a jury trial on all issues triable to a jury.

19 Wherefore, the District having answered the allegations of the Complaint, pray  
20 that this action be dismissed with prejudice and Plaintiff taking nothing; that this Court  
21 deny any request for injunctive relief; award the District their reasonable attorney's fees  
22 incurred in defending this action as permitted under A.R.S. § 12-341.01 and/or 42 U.S.C.  
23 § 1988; award the District their taxable costs incurred in defending this action; and for  
24 such other and further relief as this Court deems just and proper.

25 DATED: February 22~~May~~, 2018.

UDALL SHUMWAY PLC

/s/ David R. Schwartz

1           David R. Schwartz  
2           1138 North Alma School Road  
3           Suite 101  
4           Mesa, AZ 85201  
5           Attorneys for Defendant Maricopa County  
6           Community College District

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1

2                   **CERTIFICATE OF SERVICE**

3                   I hereby certify that on February 22 May \_\_\_\_, 2018, I electronically filed the  
4 attached document using ECF for filing and transmitted the document through ECF to the  
following registered ECF users:

5

6 Israel G. Torres  
James E. Barton, II  
7 Saman Golestan  
TORRES LAW GROUP, PLLC  
8 2239 W. Baseline Rd.  
Tempe, AZ 85283  
9 Attorneys for Plaintiff

10

11                   /s/ Kimberly Kershner

12

511062248728.1  
109883.022

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

## EXHIBIT B

# UDALL | SHUMWAY

1138 NORTH ALMA SCHOOL ROAD, SUITE 101  
MESA, ARIZONA 85201  
Telephone: 480.461.5300 | Fax: 480.833.9392

David R. Schwartz - #009264  
das@udallshumway.com  
Kimberly R. Davis - # 030210  
krd@udallshumway.com  
Attorneys for Defendant Maricopa County  
Community College District, Wise and Miranda

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

CINDI TANNER Cindi Tanner, an individual,

NO. CV-18-00377-PHX-SPL

Plaintiff,  
v.  
MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT Maricopa County Community College District, a political subdivision of Arizona; MARIA WISE Maria Wise, an individual and in her official capacity; VIVIAN MIRANDA STRAWBRIDGE Vivian Miranda Strawbridge, an individual and in her official capacity.

**DEFENDANTsS MARIA WISE AND  
VIVIAN MIRANDA-WENDELKEN'S  
FIRST AMENDED ANSWER AND  
JURY DEMAND**

#### Defendants.

Defendants Maria Wise and Vivian Miranda-Wendelken hereby (collectively “Defendants”) admit, deny and allege in response to the allegations of the Complaint as follows:

1. The Defendants admit that Cynthia Tanner, aka Cindi Tanner, is a resident of Maricopa County, Arizona.

2. The Defendants admit the allegations of ¶ 2 of the Complaint.

1       3. The District admit that Defendant Maria Wise, Ed. D (hereinafter “Dr.  
2 Wise”), has since April 23, 2016 served as the Vice President of Academic and Student  
3 Affairs and Title IX Coordinator at GateWay Community College (“GateWay”). The  
4 remaining allegations of ¶ 3 of the Complaint are denied.

5       4. The Defendants admit that since September 12, 2016 Defendant Vivian  
6 Miranda-Wendelken (who was formerly known as Vivian Miranda-Strawbridge)  
7 (hereinafter “Dr. Miranda”) served as GateWay’s Dean of Student Success and Retention.  
8 The remaining allegations of ¶ 4 of the Complaint are denied.

9       5. The Defendants admit that the Maricopa County Superior Court had  
10 jurisdiction over the subject matter alleged in the Complaint. The remaining allegations  
11 of ¶ 5 of the Complaint are denied. The Defendants affirmatively allege that this federal  
12 court has jurisdiction over the federal law claims pursuant to 28 U.S.C. §§ 1331, 1343  
13 and jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. The Defendants  
14 further allege that this action was timely and properly removed from the Maricopa County  
15 Superior Court to this federal court pursuant to 28 U.S.C. §§ 1441-1442, 1446 and these  
16 Defendants do hereby consent to such removal.

17       6. The Defendants admit that Maricopa County was the proper venue in State  
18 Court as the Plaintiff and the named Defendants resided in and/or conducted business  
19 within that County. The Defendants affirmatively allege that venue is proper in this  
20 federal District Court.

21       7. The Defendants admit that Plaintiff became a part-time employee of the  
22 Maricopa County Community College District (“District”) during the Spring of 2015 and  
23 she served as a full-time employee from January 3, 2017 until her termination on June 15,  
24 2017.

25       8. The Defendants admit that from January 3, 2017 until her termination on  
26 June 15, 2017 Plaintiff served as the Office Coordinator II who worked in the Disability  
27 Resources and Services (“DRS”) office located at GateWay’s Washington campus.

28       9. The Defendants deny the allegations of ¶ 9 of the Complaint.

1       10. The Defendants admit that from January 3, 2017 until her termination on  
2 June 15, 2017 Plaintiff served as the Office Coordinator II who worked in the DRS office  
3 located at GateWay's Washington campus. The remaining allegations of ¶ 10 of the  
4 Complaint are denied.

5       11. The Defendants deny the allegations of ¶ 11 of the Complaint.  
6       12. The Defendants deny the allegations of ¶ 12 of the Complaint.  
7       13. The Defendants deny the allegations of ¶ 13 of the Complaint.  
8       14. The Defendants deny the allegations of ¶ 14 of the Complaint.  
9       15. The Defendants deny the allegations of ¶ 15 of the Complaint.  
10      16. The Defendants deny the allegations of ¶ 16 of the Complaint.  
11      17. The Defendants deny the allegations of ¶ 17 of the Complaint.  
12      18. The Defendants deny the allegations of ¶ 18 of the Complaint.  
13      19. The Defendants deny the allegations of ¶ 19 of the Complaint.  
14      20. The Defendants deny the allegations of ¶ 20 of the Complaint.  
15      21. The Defendants deny the allegations of ¶ 21 of the Complaint.  
16      22. The Defendants lacks sufficient information as to the truth of the allegations  
17 of ¶ 22 of the Complaint and, therefore, deny such allegations.

18      23. The Defendants lacks sufficient information as to the truth of the allegations  
19 of ¶ 23 of the Complaint and, therefore, deny such allegations.

20      24. The Defendants deny the allegations of ¶ 24 of the Complaint.  
21      25. The Defendants deny the allegations of ¶ 25 of the Complaint.  
22      26. The Defendants deny the allegations of ¶ 26 of the Complaint  
23      27. The Defendants deny the allegations of ¶ 27 of the Complaint.  
24      28. The Defendants deny the allegations of ¶ 28 of the Complaint.  
25      29. The Defendants admit that Dr. Miranda, the acting DRS Manager in the  
26 absence of James Rogers, asked Plaintiff to provide via campus e-mail, addressed to Dr.  
27 Miranda, disability records for one or more students who Dr. Miranda had to meet with  
28 to assess them for determinations regarding eligibility and/or reasonable

1 accommodations. The Defendants deny the remaining allegations of ¶ 29 of the  
2 Complaint.

3 30. The Defendants deny the allegations of ¶ 30 of the Complaint.

4 31. The Defendants admit that Dr. Miranda sought and obtained direct access  
5 to GateWay's disability database on or about February 16, 2017. The Defendants deny  
6 the remaining allegations of ¶ 31 of the Complaint.

7 32. The Defendants admit that in a May 28, 2017 letter from Plaintiff to Dr.  
8 Miranda it refers to alleged FERPA violations. The Defendants admits that Plaintiff was  
9 terminated on June 15, 2017, but affirmatively alleges that the process for termination  
10 was begun prior to May 28, 2017. The Defendants affirmatively alleges that the  
11 transmittal via the District's secure e-mail system to Dr. Miranda would and did not  
12 violate FERPA, 20 U.S.C. § 1232g, and Plaintiff was or should have been aware prior to  
13 that time that James Rogers, the DRS Manager, had transmitted student disability records  
14 via campus email to Dr. Miranda when appropriate for her to see them so she could  
15 perform her job duties.

16 33. Upon information and belief, the Defendants admit that Plaintiff did contact  
17 Eugene ("Gene") Heppard, the DRS Manager for DRS at Phoenix College, another  
18 college operated by the District. The Defendants deny the remaining allegations of ¶ 33  
19 of the Complaint.

20 34. Upon information and belief, on or about February 9, 2017 Plaintiff sent a  
21 text to Gene Heppard. The Defendants lack sufficient information as to the truth of the  
22 remaining allegations of ¶ 34 of the Complaint and, therefore, deny such allegations. The  
23 Defendants affirmatively alleges that the text contained inappropriate criticisms of or  
24 disparaging statements by Plaintiff regarding GateWay's administration including Dr.  
25 Wise and Dr. Miranda.

26 35. The Defendants deny the allegations of ¶ 35 of the Complaint. The  
27 Defendants affirmatively alleges that Gene Heppard shared the fact of the inappropriate  
28 criticisms or disparaging statements by Plaintiff with Phoenix College's Interim Vice

1 President of Student Affairs. That Vice President shared with Dr. Wise only the fact of  
2 the inappropriate criticisms or disparaging statements by Plaintiff.

3       36. The Defendants deny the allegations of ¶ 36 of the Complaint. The  
4 Defendants affirmatively alleges that Plaintiff was advised that the sharing of  
5 inappropriate criticisms or disparaging statements with persons employed by the District  
6 at other colleges regarding perceived problems with her supervisors at GateWay was  
7 inappropriate.

8       37. The Defendants deny the allegations of ¶ 37 of the Complaint.

9       38. The Defendants deny the allegations of ¶ 38 of the Complaint.

10       39. The Defendants lack any information regarding the allegations of ¶ 39 and,  
11 therefore, deny such allegations.

12       40. The Defendants lack any information regarding the allegations of ¶ 40 and,  
13 therefore, deny such allegations.

14       41. The Defendants lack any information regarding the allegations of ¶ 41 and,  
15 therefore, deny such allegations.

16       42. The Defendants lack any information regarding the allegations of ¶ 42 and,  
17 therefore, deny such allegations.

18       43. The Defendants lack any information regarding the allegations of ¶ 43 and,  
19 therefore, deny such allegations.

20       44. The Defendants lack any information regarding the allegations of ¶ 44 and,  
21 therefore, deny such allegations.

22       45. The Defendants lack any information regarding the allegations of ¶ 45 and,  
23 therefore, deny such allegations.

24       46. The Defendants lack any information regarding the allegations of ¶ 46 and,  
25 therefore, deny such allegations.

26       47. The Defendants lack any information regarding the allegations of ¶ 47 and,  
27 therefore, deny such allegations.

28

1       48. The Defendants lack any information regarding the allegations of ¶ 48 and,  
2 therefore, deny such allegations. The Defendants affirmatively alleges that they were not  
3 notified that Plaintiff filed a complaint with US Department of Education's Office of Civil  
4 Rights.

5       49. The Defendants lack any information regarding the allegations of ¶ 49 and,  
6 therefore, deny such allegations.

7       50. The Defendants admit that on May 28, 2017 Plaintiff delivered to Dr.  
8 Miranda a letter alleging violations of the Americans with Disabilities Act ("ADA"),  
9 regulations based on the ADA, FERPA, Title IX set forth in 20 U.S.C. § 1681 et seq., and  
10 practices recommended by a private organization known as AHEAD. The letter speaks  
11 for itself as to what was alleged. The Defendants deny the remaining allegations of ¶ 50  
12 of the Complaint. The Defendants denies that the District violated any applicable laws.  
13 Defendants affirmatively allege that Dr. Wise was on vacation from May 1, 2017 through  
14 July 6, 2017.

15       51. The Defendants deny the allegations of ¶ 51 of the Complaint.

16       52. The Defendants admit that on February 27, 2017 Dr. Miranda, as acting  
17 DRS Manager, met with Plaintiff to go over Dr. Miranda's workplace expectations for  
18 Plaintiff to properly perform her duties in the Office Coordinator II position; that Dr.  
19 Miranda explained to Plaintiff that she, like all full-time employees, was required to  
20 accurately and fully enter information and complete her time card using the District's  
21 Human Capital Management system; that Dr. Miranda also explained that she was  
22 responsible for entering information and submitting invoices for the payment of various  
23 persons or companies who provided services such as note-taking and interpreting using  
24 the District's financial system; that scheduling services and submitting for the payment  
25 for such services represented a major aspect of up to 30% of the essential duties of an  
26 Office Coordinator II; and Dr. Miranda indicated Plaintiff should obtain training to fulfill  
27 these duties. The Defendants deny the remaining allegations of ¶ 52 of the Complaint.

28       53. The Defendants deny the allegations of ¶ 53 of the Complaint.

1       54. The Defendants admit that at some time Dr. Miranda advised Plaintiff that  
2 she was inappropriately entering information in DRS case notes for an individual student.  
3 The Defendants deny the remaining allegations of ¶ 54 of the Complaint.

4       55. The Defendants deny the allegations of ¶ 55 of the Complaint.

5       56. The Defendants deny the allegations of ¶ 56 of the Complaint.

6       57. The Defendants deny the allegations of ¶ 57 of the Complaint.

7       58. The Defendants deny the allegations of ¶ 58 of the Complaint.

8       59. The Defendants admit that the District does have records including the  
9 Workplace Expectations document, various e-mails, and other documents regarding the  
10 duties for which Plaintiff was responsible. The Defendants deny the remaining  
11 allegations of ¶ 59 of the Complaint.

12       60. The Defendants admit that Plaintiff had to be told on several occasions that  
13 her duties were to provide general procedural information to students, staff and faculty,  
14 and it was not her role as the Office Coordinator II in DRS to make substantive  
15 assessments or determinations. The Defendants deny the remaining allegations of ¶ 60  
16 of the Complaint.

17       61. The Defendants deny the allegations of ¶ 61 of the Complaint.

18       62. The Defendants deny the allegations of ¶ 62 of the Complaint.

19       63. The Defendants admit that on May 3, 2017 Dr. Miranda sent an e-mail to  
20 Plaintiff and affirmatively alleges that such e-mail speaks for itself. The Defendants deny  
21 the remaining allegations of ¶ 63 of the Complaint.

22       64. The Defendants deny the allegations of ¶ 64 of the Complaint.

23       65. The Defendants admit that Plaintiff stated that her son had tried to commit  
24 suicide and that as a result she was unavailable to work for a period. The District further  
25 admits and/or alleges that Spring Break in the Spring 2017 semester at GateWay was  
26 March 13-19, 2017 and the entire college at all campuses was closed March 16-19, 2017.  
27 The Defendants deny the remaining allegations of ¶ 65 of the Complaint.

28

1       66. The Defendants admit that Dr. Miranda was informed of Plaintiff's  
2 situation regarding her son. The Defendants deny the remaining allegations of ¶ 66 of the  
3 Complaint.

4       67. The Defendants deny the allegations of ¶ 67 of the Complaint.

5       68. The Defendants deny the allegations of ¶ 68 of the Complaint.

6       69. The Defendants deny the allegations of ¶ 69 of the Complaint.

7       70. The Defendants deny the allegations of ¶ 70 of the Complaint.

8       71. The Defendants admit that due to Plaintiff's failure to obtain the training  
9 which she was directed to get by Dr. Miranda, Plaintiff was aware that she failed to take  
10 the necessary steps to get vendors timely and properly paid. The Defendants deny the  
11 remaining allegations of ¶ 71 of the Complaint.

12       72. The Defendants admit that on June 15, 2017 Plaintiff was notified by letter  
13 that she was terminated as of that date and this date was before the end of her probationary  
14 period. The Defendants affirmatively allege that the District had the right to terminate  
15 Plaintiff's employment at any time.

16       73. The Defendants admit the allegations of ¶ 73 of the Complaint.

17       74. The Defendants admit that Plaintiff on April 24, 2017 provided to Alyssa  
18 Brown, a HR Business Partner with the District's HR Solutions Center, a letter from  
19 Surge Points. The letter speaks for itself as to its contents. The Defendants deny the  
20 remaining allegations of ¶ 74 of the Complaint.

21       75. The Defendants admit that on May 1 or 2, 2017, Plaintiff submitted a  
22 Request for Reasonable ADA Accommodations form to the District's HR Solutions  
23 Center which alleged Plaintiff suffered from Post-Traumatic Stress Disorder. The  
24 document speaks for itself as to its content. The Defendants deny the remaining  
25 allegations of ¶ 75 of the Complaint. The Defendants affirmatively allege that although  
26 provided with the proper form, Plaintiff failed to submit the other form necessary for the  
27 District to process a request for accommodation.

28

1       76. The Defendants admits that the quoted language appears in a portion of the  
2 Request for Reasonable ADA Accommodations form submitted by Plaintiff. The  
3 Defendants deny that the statement is accurate.

4       77. The Defendants admit that such language appears in a portion of the  
5 Request for Reasonable ADA Accommodations form submitted by Plaintiff to the  
6 District. The Defendants deny that the statement is accurate or requests a reasonable  
7 accommodation for a disability under District policy, the ADA or the Rehabilitation Act.

8       78. The Defendants deny the allegations of ¶ 78 of the Complaint.

9       79. The Defendants deny the allegations of ¶ 79 of the Complaint.

10       80. The Defendants lack sufficient information as to the truth of the allegations  
11 in ¶ 80 of the Complaint and, therefore, deny such allegations. The Defendants  
12 affirmatively allege that Plaintiff represented and/or ratified her time cards which are  
13 inconsistent with such claim.

14       81. The Defendants deny the allegations of ¶ 81 of the Complaint.

15       82. The Defendants admit that Plaintiff's hourly rate for pay in 2017 was  
16 \$16.80 per hour. The Defendants deny the remaining allegations of ¶ 82 of the Complaint.

17       83. The Defendants lack sufficient information as to the truth of the allegations  
18 in ¶ 83 of the Complaint and, therefore, deny such allegations. The Defendants  
19 affirmatively alleges that Plaintiff represented and/or ratified her time cards which are  
20 inconsistent with such claim.

21       84. The Defendants admit Plaintiff was paid by the District for all time reported  
22 by and for her in 2016 and most of 2017. The Defendants deny the remaining allegations  
23 of ¶ 84 of the Complaint.

24       85. The Defendants deny the allegations of ¶ 85 of the Complaint.

25       86. The Defendants deny the allegations of ¶ 86 of the Complaint.

26       87. The Defendants deny the allegations in ¶ 87 of the Complaint.

27

28

1                   **FIRST CLAIM FOR RELIEF**

2       88. In response to the allegations of ¶ 88 of the Complaint, the Defendants  
3 incorporate their admissions, denials and other responses set forth above or below.

4       89. The allegations of ¶ 89 of the Complaint do not seem to call for any  
5 admission or denial from Defendants. The Defendants acknowledges 42 U.S.C. §  
6 12203(a), which is part of the ADA, and such statute speaks for itself, and must be  
7 interpreted in conjunction with other statutes, regulations and case law. The Defendants  
8 deny that the District or Defendants violated such statute.

9       90. The allegations of ¶ 90 of the Complaint do not seem to call for any  
10 admission or denial. The Defendants acknowledge 42 U.S.C. § 12203(b), which is part  
11 of the ADA, and such statute speaks for itself, and must be interpreted in conjunction with  
12 other statutes, regulations and case law. The Defendants deny that the District or the  
13 Defendants violated such statute.

14      91. The Defendants deny the allegations of ¶ 91 of the Complaint.

15      92. The Defendants admit that Plaintiff delivered a letter on May 28, 2017 to  
16 Dr. Miranda and that Plaintiff was terminated on June 15, 2017. The Defendants deny  
17 those events are in any way related.

18      93. The allegations of ¶ 93 of the Complaint do not seem to call for any  
19 admission or denial. The Defendants acknowledge the Rehabilitation Act and such statute  
20 speaks for itself, and must be interpreted in conjunction with other statutes, regulations  
21 and case law. The Defendants deny that the District or Defendants violated such statute.

22      94. The District admits that Plaintiff delivered on or about May 1 or 2, 2017 a  
23 form requesting a reasonable accommodation and that Plaintiff was terminated on June  
24 15, 2017. The Defendants deny those events are in any way related.

25      95. The Defendants deny the allegations of ¶ 95 of the Complaint.

26      96. Except to the extent expressly admitted herein, the Defendants deny every  
27 allegation of the First Claim for Relief and ¶ 1 through 95 of the Complaint, whether  
28 viewed singly or in combination.

1                   SECOND CLAIM FOR RELIEF

2       97. In response to the allegations of ¶ 96 of the Complaint, the Defendants  
3 incorporate their admissions, denials and other responses set forth above or below.

4       98. The allegations of ¶ 97 of the Complaint do not seem to call for any  
5 admission or denial. The Defendants acknowledge A.R.S. § 38-532 and such statute  
6 speaks for itself, and must be interpreted in conjunction with other statutes, regulations  
7 and case law. The Defendants deny that the District or Defendants violated such statute.

8       99. The allegations of ¶ 98 and 99 of the Complaint do not seem to call for any  
9 admission or denial. The Defendants acknowledge A.R.S. § 23-1501(3)(c)(ii) and such  
10 statute speaks for itself, and must be interpreted in conjunction with other statutes,  
11 regulations and case law. The Defendants deny that the District or the Defendants  
12 violated such statute.

13      100. The Defendants admit that on May 28, 2017 Plaintiff delivered to Dr.  
14 Miranda a letter regarding alleged violations as set forth in the letter. The Defendants  
15 deny the remaining allegations of ¶ 100 of the Complaint. The Defendants deny that the  
16 District or the Defendants violated any applicable law or retaliated for any disclosure  
17 protected by law.

18      101. The Defendants deny the allegations of ¶ 101 of the Complaint.

19      102. The allegations of ¶ 102 of the Complaint do not seem to call for any  
20 admission or denial. The Defendants acknowledge A.R.S. § 23-1501(3)(c)(i) and such  
21 statute speaks for itself, and must be interpreted in conjunction with other statutes,  
22 regulations and case law. The Defendants deny that the District or the Defendants  
23 violated such statute.

24      103. The Defendants deny the allegations of ¶ 103 of the Complaint.

25      104. Except to the extent expressly admitted herein, the Defendants deny every  
26 allegation of the Second Claim for Relief and ¶ 1 through 103 of the Complaint, whether  
27 viewed singly or in combination.

28

**THIRD CLAIM FOR RELIEF**

105. In response to the allegations of ¶ 104 of the Complaint, the Defendants incorporate their admissions, denials and other responses set forth above or below.

106. The allegations of ¶ 105 of the Complaint do not seem to call for any admission or denial. The elements of the tort of intentional infliction of emotional distress are set forth in case law. The Defendants deny that the District or the Defendants committed this tort.

107. The Defendants deny the allegations of ¶ 106 of the Complaint.

108. The Defendants deny the allegations of ¶ 107 of the Complaint.

109. The Defendants deny the allegations of ¶ 108 of the Complaint.

110. The District denies the allegations of ¶ 109 of the Complaint.

111. The allegations of ¶ 110 of the Complaint do not seem to call for any admission or denial. The doctrine of respondeat superior is as set forth in case law.

112. The Defendants admit that the acts and omissions of Dr. Wise and Dr. Miranda were done in the course of their employment with the District.

113. The Defendants deny the allegations of ¶ 112 of the Complaint.

114. The Defendants deny the allegations of ¶ 113 of the Complaint.

115. The Defendants deny the allegations of ¶ 114 of the Complaint.

116. The Defendants deny the allegations of ¶ 115 of the Complaint.

117. Except to the extent expressly admitted herein, the Defendants deny every allegation of the Third Claim for Relief and ¶ 1 through 115 of the Complaint, whether viewed singly or in combination.

**FOURTH CLAIM FOR RELIEF**

118. In response to the allegations of ¶ 116 of the Complaint, the District incorporates its admission, denials and other responses set forth above or below.

119. The Defendants admit the allegations of ¶ 117 of the Complaint.

120. The Defendants deny the allegations of ¶ 118 of the Complaint, although they admit that the District failed to timely pay Plaintiff for 16.5 overtime hours (or 24.75

1 regular comp time hours at time and one half) worked in January 2017 until on or about  
2 February 27, 2018.

3 ¶21. The Defendants deny the allegations of ¶ 119 of the Complaint.

4 ¶22.¶118. Except to the extent expressly admitted herein, the Defendants deny  
5 every allegation of the Fourth Claim for Relief and ¶ 1 through 119 of the Complaint,  
6 whether viewed singly or in combination. This claim has been dismissed pursuant to  
7 stipulation of the parties and an order of this Court, so no response is necessary

8 **AFFIRMATIVE DEFENSES**

9 ¶23.¶119. The Defendants alleges the Complaint and each claim for relief fails  
10 to state a valid claim upon which relief can be granted.

11 ¶24.¶120. Defendants affirmatively allege they, as individuals, may not be sued  
12 under the ADA or, the Rehabilitation Act, A.R.S. § 23-351 et seq., and the FLSA.

13 ¶25.¶121. The Defendants affirmatively allege that Plaintiff's state law claims  
14 may be barred in part for the failure to timely comply with the notice of claim statute,  
15 A.R.S. § 12-821.01, having filed her notice on August 1, 2017 making any claim which  
16 accrued on or before February 2, 2017 barred.

17 ¶26.¶122. The Defendants affirmatively allege that Plaintiff's state law claims  
18 may be barred in part for the failure to timely file this action pursuant to A.R.S. § 12-541  
19 or, A.R.S. § 12-821, and/or A.R.S. § 23-356 so that any state law claims accruing before  
20 January 9, 2017 would be barred.

21 ¶27.¶123. The Defendants affirmatively allege that any claim for punitive  
22 damages under is barred pursuant to A.R.S. § 12-820.04.

23 ¶28.¶124. The Defendants affirmatively allege that any claim for damages or  
24 equitable relief under the ADA or the Rehabilitation Act is subject to the limitations set  
25 forth in 42 U.S.C. § 1981a.

26 ¶29.¶125. The Defendants affirmatively allege that their statements regarding  
27 Plaintiff are privileged under the First The Defendants affirmatively alleges that the  
28 District has a good faith reason for not having paid any wages which might be due for

1 alleged overtime Amendment, the Arizona Constitution, and the common law and they  
2 did not utter such statements with actual malice as defined in court cases.

3       126. The Defendants affirmatively allege that their statements regarding Plaintiff  
4 were true or substantially true which is a complete defense. The Defendants affirmatively  
5 allege that Plaintiff is estopped to claim she worked hours more than what she reported,  
6 recorded and/or ratified on her electronic time cards.

7       127. The Defendants affirmatively allege that Plaintiff's claims which are based  
8 upon statements made regarding Plaintiff are subject to the framework and standards for  
9 a defamation action under the First Amendment, the Arizona Constitution, and the  
10 common law.

11       130.128. The Defendants affirmatively allege that Plaintiff's claim for  
12 infliction of emotional distress may be barred under Arizona's workers compensation  
13 statutes.

14       131. The Defendants affirmatively allege that Plaintiff waived her state law  
15 wage claim for hours worked which she did not report to the District in a timely manner.

16       132. The Defendants affirmatively allege Plaintiff's claim for equitable relief  
17 should be barred or limited by her knowing and intentional violation of FERPA by  
18 disclosing the names of students with disabilities in her Complaint filed in open court.

19       133.129. The Defendants affirmatively alleges that the District and the  
20 Defendants would have taken the same action towards Plaintiff without regard to any  
21 alleged unlawful criteria or protected activity.

22       134.130. The Defendants affirmatively allege they acted in good faith and did  
23 not violate clear law, so they are protected by qualified immunity.

24       131. The Defendants affirmatively allege that Defendants had legitimate non-  
25 discriminatory and non-retaliatory reasons for all decisions and actions regarding  
26 Plaintiff.

27

28

1       135.132. The Defendants affirmatively allege that Plaintiff's unclean hands,  
2 including violating FERPA, the ADA, and the Rehabilitation Act, should preclude or limit  
3 her equitable remedies and/or damages.

4       133. The Defendants affirmatively allege that the Plaintiff has and/or may have  
5 failed to mitigate and/or avoid her damages.

6       134. The Defendants affirmatively allege that Plaintiff's receipt of  
7 unemployment benefits should reduce her claimed damages.

8       135. Defendants affirmatively allege that Plaintiff assumed the risk, was  
9 comparatively negligent, and/or was otherwise at fault for some her damages which  
10 should reduce any recovery under state law pursuant to A.R.S. § 12-2506.

11       136. Defendants affirmatively allege joint and several liability has been  
12 abolished and each party is liable only for their or their employees' fault pursuant to  
13 A.R.S. § 12-2506.

14       136.—

15       137. The Defendants affirmatively allege that, pursuant to 29 U.S.C. § 260, the  
16 District acted in good faith and that it had reasonable grounds for believing any act or  
17 omission alleged was not a violation of the FLSA and this Court has discretion not to  
18 award liquidated damages or any amount which exceeds the amount set forth in 29 U.S.C.  
19 § 216.

20       138. The Defendants affirmatively allege unclean hands and/or in pari delicto by  
21 Plaintiff bars and/or limits her recovery.

22       139. The Defendants affirmatively allege Plaintiff's wage claims are barred  
23 and/or limited due to laches.

24       140-137. The Defendants affirmatively allege that they may be entitled to  
25 recover their reasonable attorney's fees, expert witness fees, costs, and/or expenses  
26 pursuant to A.R.S. § 12-341.01, 28 U.S.C. § 1927, and/or 42 U.S.C. § 1988, and/or 42  
27 U.S.C. § 12205 to the extent they are sued under any claim but the Third Claim for Relief.

1       138. The Defendants affirmatively allege that they may be entitled to recover  
2 their taxable costs incurred in this action.

3 141.

Formatted: No bullets or numbering

4                   **DEMAND FOR A JURY TRIAL**

5       The Defendants hereby requests a jury trial on all issues triable to a jury.

6       Wherefore, the Defendants having answered the allegations of the Complaint, pray  
7 that this action be dismissed with prejudice and Plaintiff taking nothing; that this Court  
8 deny any request for injunctive relief; award the Defendants their reasonable attorney's  
9 fees incurred in defending this action as permitted under A.R.S. § 12-341.01 and/or 42  
10 U.S.C. § 1988 to the extent they apply; award the Defendants their taxable costs incurred  
11 in defending this action; and for such other and further relief as this Court deems just and  
12 proper.

13      DATED: March 19~~May~~ 2018.

14                   UDALL SHUMWAY PLC

16                   /s/ David R. Schwartz \_\_\_\_\_  
17       David R. Schwartz  
18       1138 North Alma School Road  
19       Suite 101  
20       Mesa, AZ 85201  
21       Attorneys for Defendant Maricopa County  
22       Community College District, Wise and Miranda

1

**CERTIFICATE OF SERVICE**

Formatted: Line spacing: Exactly 12 pt

2

I hereby certify that on March~~May~~ 19, 2018, I electronically filed the attached  
3 document using ECF for filing and transmitted the document through ECF to the  
4 following registered ECF users:

5

Israel G. Torres  
6 James E. Barton, II  
Saman Golestan  
7 TORRES LAW GROUP, PLLC  
2239 W. Baseline Rd.  
8 Tempe, AZ 85283  
9 Attorneys for Plaintiff

10

/s/ Kimberly Kershner

11

513502348702.1  
12 109883.022

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28